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No. 02-995

In the Supreme Court of the United States

BERWIND CORPORATION, PETITIONER

v.

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Commissioner of Social Security was constitutionally required under *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998), to void assignments to petitioner of liability for retired miners' benefits under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.*, notwithstanding that petitioner employed those miners and had a subsidiary, which is a "related person" to petitioner under the Act, that had promised to provide lifetime health benefits to all retired miners.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-41a) is reported at 307 F.3d 222. The opinion of the district court dated September 15, 2000 (Pet. App. 80a-90a) is unreported. The opinion of the district court dated March 31, 2000 (Pet. App. 45a-79a) is reported at 94 F. Supp. 2d 597.

JURISDICTION

The judgment of the court of appeals was entered on October 2, 2002. The petition for a writ of certiorari was filed on December 24, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Congress enacted the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), 26 U.S.C. 9701 *et seq.*, in response to a financial crisis that threatened to deprive more than 100,000 retired coal miners and their dependents of health-care benefits. Those benefits had been promised to miners in a series of collective bargaining agreements known as National Bituminous Coal Wage Agreements (NBCWAs) negotiated between the United Mine Workers of America (UMWA) and the Bituminous Coal Operators' Association (BCOA), a multi-employer bargaining association. See *Eastern Enterprises* v. *Apfel*, 524 U.S. 498, 504-514 (1998) (plurality opinion).

In the late 1930s, as the UMWA organized workers in the coal industry, heath-care benefits became an important issue in collective bargaining. In 1947, the UMWA and several coal operators entered into a NBCWA in which the operators agreed to provide health-care benefits to miners and their dependents. The 1947 NBCWA did not, however, promise specific benefits or guarantee lifetime benefits. The UMWA and the BCOA entered into similar agreements in subsequent years. See *Eastern Enterprises*, 524 U.S. at 504-509 (plurality opinion).

In 1974, the UMWA and the BCOA entered into a NBCWA that, for the first time, explicitly promised lifetime health benefits to miners and their dependents. In 1978, the UMWA and the BCOA entered into a new NBCWA in which signatory operators agreed to provide lifetime benefits for their own active and retired employees as well as for all "orphaned" miners whose employers had ceased coal operations or withdrawn from the NBCWAs. Signatory employers were re-

quired to contribute enough to pay for the promised benefits and to remain liable as long as they remained in the coal industry. See *Eastern Enterprises*, 524 U.S. at 509-511 (plurality opinion).

In the 1980s and 1990s, the financial stability of the private multi-employer plans that had been established to finance those benefits was undermined by increasing health-care costs and the termination of coal operators' contribution obligations as operators switched to non-union employees or left the coal industry altogether. As more coal operators withdrew from the plans, the remaining operators were forced to bear more of the costs, which in turn led to even more defections and created a downward spiral. See *Eastern Enterprises*, 524 U.S. at 511-514 (plurality opinion).

Congress's objectives in enacting the Coal Act were to "identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to * * * retirees," to "allow for sufficient operating assets for such plans," and to "provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans." Energy Policy Act of 1992, Pub. L. No. 102-486, Title XIX, § 19142, 106 Stat. 3037. In furtherance of those ends, the Coal Act established a private multi-employer plan known as the United Mine Workers of America Combined Benefit Fund (Combined Fund). The Combined Fund provides health-care benefits to individuals who, at the time that the Coal Act was enacted, were receiving benefits from the multi-employer plans. See 26 U.S.C. 9702, 9703(f).

The Combined Fund is financed principally by premiums paid by the "signatory operator[s]"—or "related person[s]" of those operators—that formerly employed

the retired miners who (with their dependents) are beneficiaries of the Combined Fund. 26 U.S.C. 9704, 9706(a). The Coal Act defines a "signatory operator" as "a person which is or was a signatory to a coal wage agreement." 26 U.S.C. 9701(c)(1).

b. The Coal Act vests the Commissioner of Social Security (Commissioner) with the task of assigning retired miners who are eligible for benefits from the Combined Fund to signatory operators or related persons of those operators. 26 U.S.C. 9706(a). The Coal Act provides for assignments to be made under a three-tier hierarchy based on how long and how recently a miner worked for a particular employer and on whether the employer signed a NBCWA in 1978 or thereafter. See 26 U.S.C. 9701(b)(1) and (c)(1), 9706(a). Any signatory operator that receives business revenue, "whether or not in the coal industry," may be assigned beneficiaries under the Coal Act. 26 U.S.C. 9701(c)(7), 9706(a).

The Coal Act also imposes shared responsibility on a signatory operator's "related persons," which are defined to include members of a commonly controlled group of corporations that includes the signatory operator, businesses under common control with the signatory operator, and successors in interest to a related person. 26 U.S.C. 9701(c)(2)(A). Related persons may be directly assigned liability for premiums for a retired miner and his dependents. See 26 U.S.C. 9706(a). In addition, related persons are jointly and severally liable for the premiums of the assigned operator. See 26 U.S.C. 9704(a). For assignment purposes, "[a]ny employment of a coal industry retiree in the coal industry by a signatory operator shall be treated as employment by any related persons to such operator." 26 U.S.C. 9706(b)(1)(A).

If a retired miner cannot be assigned to any coal operator or related person that remains in business, the miner is considered "unassigned." See 26 U.S.C. 9704(a)(3) and (d). The Coal Act provides several sources of funding for the benefits of unassigned beneficiaries, including transfers from the Department of the Interior's Abandoned Mine Land Reclamation Fund (AML Fund) and, if necessary, assessments of an "unassigned beneficiary premium" from coal operators and related persons that have been assigned retired miners. See 26 U.S.C. 9704(a), 9705(a) and (b).[1]

c. In *Eastern Enterprises*, this Court invalidated the Commissioner's assignment to Eastern of responsibility for the Combined Fund premiums of more than 1000 retired miners and their beneficiaries that were estimated to total between $50 million and $100 million. The Commissioner had made those assignments under 26 U.S.C. 9706(a)(3), the third tier of the Coal Act's assignment hierarchy, because Eastern had employed the miners and had signed NBCWAs in the 1960s.[2]

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[1] The AML Fund was established by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, for the purpose of reclaiming and restoring land and water resources adversely affected by past coal mining. See 30 U.S.C. 1231(c). The AML Fund is financed by fees assessed on coal operators for each ton of coal produced. See 30 U.S.C. 1232(a). To date, AML Fund transfers have been sufficient to avoid the assessment of an unassigned beneficiary premium.

[2] Although Eastern had a subsidiary, Eastern Associated Coal Corporation (EACC), that had signed NBCWAs in 1974 and thereafter, Eastern had sold all of its interest in EACC in 1987. 524 U.S. at 516 (plurality opinion); see 26 U.S.C. 9701(c)(2)(B) (related person status is determined as of July 20, 1992, unless coal operator went out of business earlier). EACC thus was not a "related person" to Eastern within the meaning of the Coal Act, and the

A plurality of the Court concluded that the challenged assignments violated the Just Compensation Clause of the Fifth Amendment. The plurality reasoned that the Coal Act "place[d] a severe, disproportionate, and extremely retroactive burden on Eastern." 524 U.S. at 538. The plurality emphasized that Eastern had not engaged in coal mining since 1965, had employed the assigned miners "some 30 to 50 years before" the enactment of the Coal Act, and had not signed "the 1974, 1978, or subsequent NBCWA's," which the plurality described as the "agreements that first suggest an industry commitment to the funding of lifetime health benefits." *Id.* at 530-531. The plurality noted that, under the earlier NBCWAs that Eastern had signed, a coal operator's obligation was limited to a fixed royalty, withdrawal was permitted, and miners were provided with "far less extensive" benefits that "were fully subject to alteration or termination." *Id.* at 531; see *id.* at 535-536.

Justice Kennedy concurred in the judgment. 524 U.S. at 539-550. Justice Kennedy disagreed with the plurality's takings analysis, but concluded that the challenged assignments violated the Due Process Clause. Justice Kennedy reasoned that the Commissioner's assignments to Eastern based on "events which occurred 35 years ago" had "a retroactive effect of unprecedented scope" that could not be justified as "remedial," because those assignments were designed to satisfy a promise to provide lifetime health benefits "made long after Eastern left the coal business." *Id.* at 549-550.

2. From at least 1950 until at least 2002, petitioner engaged in coal mining, both directly and through a

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Commissioner had not made assignments to Eastern based on its relationship to EACC. See 524 U.S. at 530 (plurality opinion).

complex of subsidiaries with "constant name changes and shifting corporate structures." Pet. App. 12a; see *id.* at 10a-13a. Petitioner itself mined coal until 1962 and signed NBCWAs and amendments throughout the 1950s. *Id.* at 11a. From 1963 through 1984, petitioner's subsidiary Reitz Coal Company (Reitz) mined coal. *Id.* at 12a. Reitz signed NBCWAs through 1981. *Ibid.*[3] Petitioner owned Reitz until Reitz was dissolved on December 31, 1993. *Ibid.* Petitioner "concedes that it and Reitz are 'related persons' as defined by the Coal Act." *Id.* at 25a; accord Pet. 10 n.1.

After the enactment of the Coal Act, the Commissioner assigned petitioner responsibility for the health-care benefits of some 1900 of its former employees. Petitioner filed suit against the Secretary of Health and Human Services and the Combined Fund, claiming that the assignments violated the Just Compensation and Due Process Clauses of the Fifth Amendment. The district court granted summary judgment against petitioner, the court of appeals affirmed, and this Court denied certiorari. *Templeton Coal Co.* v. *Shalala*, 882 F. Supp. 799 (S.D. Ind. 1995), aff'd sub nom. *Davon, Inc.* v. *Shalala*, 75 F.3d 1114 (7th Cir.), cert. denied, 519 U.S. 808 (1996).

3. After this Court's decision in *Eastern Enterprises*, the Commissioner invalidated numerous assignments in circumstances where neither the company to which the assignment was made nor any "related per-

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[3] Petitioner (then known as the Berwind-White Coal Mining Company) became the 98% shareholder of Reitz in 1963 and acquired the remaining 2% thereafter. Pet. App. 10a-11a. Reitz ceased mining coal in 1984. Petitioner also owned a second subsidiary that assumed Reitz's obligations under the 1981 NBCWA and later assumed the name Reitz Coal Company. *Id.* at 11a-12a.

son" had signed the 1974 NBCWA or any subsequent NBCWA. See Pet. App. 19a. The Commissioner declined to invalidate petitioner's assignments, however, because Reitz, which is a "related person" to petitioner under the Coal Act, see 26 U.S.C. 9701(c)(2)(A), had signed the 1974, 1978, and 1981 NBCWAs promising lifetime benefits to all retired miners.

Petitioner brought a second suit challenging its assignments, naming as defendants the Commissioner, the Combined Fund, and its Trustees. Petitioner contended that its assignments are unconstitutional under the Just Compensation and Due Process Clauses, that the entire Coal Act is unconstitutional, that the Commissioner acted arbitrarily and capriciously under the Administrative Procedure Act (APA), 5 U.S.C. 706(2)(A), in refusing to void its assignments after *Eastern Enterprises*, and that it was entitled to a refund of premiums previously paid. Pet. App. 20a-21a. The district court dismissed all of petitioner's constitutional claims as barred by res judicata. See *id.* at 21a, 65a-66a, 79a, 87a. The court held, however, that the Commissioner had acted arbitrarily and capriciously in refusing to void petitioner's assignments after *Eastern Enterprises*. See *id.* at 21a, 69a-71a, 87a.

4. The court of appeals reversed. Pet. App. 1a-40a.

The court of appeals observed that "all of the issues" raised by petitioner in this case, whether based on the Constitution or on the APA, "turn on whether [petitioner] is in a substantially identical position to the plaintiff in *Eastern Enterprises*." Pet. App. 22a-23a (emphasis added). The court explained that, because "the Court's judgment in *Eastern Enterprises* was not based on any single rationale," the "only binding aspect" of that judgment "is its 'specific result,' i.e., that the Act is unconstitutional as applied to Eastern

Enterprises." *Id.* at 24a. Accordingly, the court held that *Eastern Enterprises* mandates judgment for companies assigned Coal Act liability "only if they stand in a substantially identical position to Eastern Enterprises with respect to both the plurality and Justice Kennedy's concurrence." *Id.* at 25a. The court considered it "obvious" that petitioner "is not in a 'substantially identical position to Eastern,'" because petitioner, unlike Eastern, had a statutory "related person" that signed the 1974 NBCWA and subsequent NBCWAs. *Id.* at 27a. The court observed that, although Eastern did have a subsidiary that also signed those NBCWAs, Eastern sold that subsidiary in 1987, so that the subsidiary could not qualify as a statutory "related person" to Eastern. *Id.* at 27a-28a. Thus, the court recognized that *Eastern Enterprises* "never addressed the question of premium liability under the Coal Act's 'related person' provision, the basis of [petitioner's] liability here." *Id.* at 27a.

The court of appeals then concluded that there is nothing unconstitutional about imposing liability on companies in petitioner's circumstances under the Coal Act's "related person" provisions. Pet. App. 30a-40a. The court reasoned that Congress had "a sufficient basis to impose liability on companies 'related' to coal companies that signed the 1974 or later NBCWAs," because Congress could properly conclude that the coal industry created a reasonable expectation in miners of lifetime health benefits and was primarily responsible for the deterioration in the existing benefit plans. *Id.* at 35a. Indeed, the court noted that, "given [petitioner's] structural evolution and network of changing affiliates and names, it could be argued that [petitioner's] involvement in the coal industry reflects precisely the kind of 'corporate shell game' that Congress was

concerned about when it enacted the Coal Act." *Id.* at 37a n.25. The court further reasoned that the retroactive reach of the Coal Act was not excessive with respect to companies in petitioner's circumstances, noting that petitioner's subsidiary signed a NBCWA as recently as 1981, only 11 years before the enactment of the Coal Act, and that petitioner "continues to have ties to the coal industry." *Id.* at 39a. Finally, the court reasoned that the burden imposed by the Coal Act on companies in petitioner's position is not unreasonable or disproportionate because such companies "bear[] * * * responsibility * * * for creating a reasonable expectation of lifetime health benefits and for creating the problem of under-funding that the Coal Act seeks to remedy." *Id.* at 39a-40a.

ARGUMENT

The court of appeals correctly concluded that this Court's decision in *Eastern Enterprises* does not require invalidation of petitioner's assignments of liability under the Coal Act for the health-care benefits of its retirees. As the court of appeals recognized, petitioner is not in a substantially identical position to the coal operator in *Eastern Enterprises* because, unlike that coal operator, petitioner has a statutory "related person" that signed the 1974 NBCWA and later NBCWAs promising lifetime benefits to *all* coal miners. The court of appeals also correctly held that Congress could constitutionally impose Coal Act liability on companies such as petitioner that allowed their subsidiaries to make such promises and thereby to give coal miners a reasonable expectation of lifetime benefits. The court of appeals' decision in this case is consistent with the decisions of other courts of appeals and raises no

question of continuing significance that warrants this Court's review.

1. Petitioner asserts (Pet. 7) that the court of appeals' decision "nullif[ies]" this Court's holding in *Eastern Enterprises*. Petitioner is mistaken. As the court of appeals recognized, because no rationale commanded a majority of the Court in *Eastern Enterprises*, only a company in a "substantially identical" position to Eastern is entitled to invalidation of its assignments under the holding of that case. Petitioner is not in a substantially identical position to Eastern. Petitioner acknowledges (Pet. 8, 10) that its subsidiary Reitz is a "related person" to petitioner within the meaning of the Coal Act, see 26 U.S.C. 9701(c)(2)(A), and that Reitz signed the "watershed" 1974 NBCWA and subsequent NBCWAs. Eastern had no such "related person." It thus does not contravene *Eastern Enterprises* to decline to extend its holding to petitioner.

a. In concluding that the assignments in *Eastern Enterprises* were unconstitutional, the plurality and concurring opinions emphasized that Eastern had not signed the 1974 NBCWA, which was the first to make an explicit promise of lifetime health-care benefits, or any subsequent NBCWA, and thus could not reasonably have contemplated being held responsible for providing such benefits. See 524 U.S. at 530 (plurality opinion) (explaining that Eastern had not "participated in negotiations nor agreed to make contributions" to satisfy the "industry commitment to the funding of lifetime health benefits" made in the 1974 NBCWA and later NBCWAs); *id.* at 550 (Kennedy, J., concurring in the judgment) (reasoning that Eastern was "not responsible for [retired miners'] expectation of lifetime health benefits" because it did not sign NBCWAs in 1974 or thereafter).

In contrast, petitioner could reasonably have anticipated the obligations at issue here. As of the date that the Coal Act was enacted and the date that "related person" status is determined under the Coal Act, see 26 U.S.C. 9701(c)(2)(B)), petitioner had a wholly owned subsidiary, Reitz, that had signed the 1974 NBCWA and subsequent NBCWAs promising lifetime benefits not only to its own retirees, but also to other retirees who were "orphaned" by their employers.[4] In such circumstances, petitioner could not have had "reasonable investment-backed expectations," *Eastern Enterprises*, 524 U.S. at 532 (plurality opinion), that it could never be made responsible for providing the very benefits to its own retirees that its subsidiary had promised to *all* retirees.

b. Petitioner contends (Pet. 10) that it cannot meaningfully be distinguished from Eastern because, like petitioner, Eastern had a subsidiary, Eastern Associated Coal Corporation (EACC), that signed the 1974 NBCWA and subsequent NBCWAs. As the plurality explicitly recognized in *Eastern Enterprises*, however, Eastern had sold EACC in 1987, five years before the enactment of the Coal Act and the date as of which the Coal Act determines "related person" status; in those circumstances, the Court held that "Eastern's liability under the Act [could] bear[] no relationship to its ownership of EACC." 524 U.S. at 516, 530. Accordingly, the Court had no occasion in *Eastern Enterprises* to consider whether the Constitution would bar assignment of responsibility to a parent that remained in

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[4] Petitioner thus errs in suggesting (Pet. 11) that Reitz's promises extended only to its "own employees." See *Eastern Enterprises*, 524 U.S. at 509-511 (plurality opinion) (describing obligations undertaken by signatories to 1974 and 1978 NBCWAs).

control of a subsidiary on the date that the Coal Act was passed—and on the date as of which "related person" status is determined—where the subsidiary had signed the 1974 NBCWA or subsequent NBCWAs promising lifetime benefits to all retired miners. See Pet. App. 27a (noting that *Eastern Enterprises* "never addressed the question of premium liability under the Coal Act's 'related person' provision"). Here, in contrast, petitioner has such a "related person," its subsidiary Reitz.

Nor is there anything unfair about treating petitioner and its subsidiary as a single entity for purposes of imposing liability under the Coal Act. Petitioner allowed its subsidiary to sign and operate until 1984 under NBCWAs promising lifetime health-care benefits to all miners, and petitioner as well as its subsidiary may be presumed to have profited from the services rendered by miners in return for those promises. Thus, as the court of appeals recognized, petitioner "bears * * * responsibility * * * for creating a reasonable expectation of lifetime health benefits." Pet. App. 39a. Cf. *Pension Benefit Guar. Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729-730 (1984) (recognizing that Congress ordinarily may impose retroactive liability on employers to fund employee benefits in pursuit of "a rational legislative purpose," such as to spread the cost of those benefits among all those "who have profited from the fruits of [the employees'] labors") (quoting *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 18 (1976)).

Moreover, Congress's choice in the Coal Act to permit liability to be imposed not only on NBCWA signatories but also on "related persons" was particularly justified given the evidence before it that coal operators' use of nominally separate companies had contri-

buted substantially to the funding crisis that the Coal Act was intended to solve. Cf. *R.A. Gray*, 467 U.S. at 730-731 (sustaining retroactive application of withdrawal liability provisions of Multiemployer Pension Plan Amendments Act of 1980 as a permissible means of discouraging withdrawals that would require remaining employers to increase their contributions to existing plans and affect the stability of those plans); accord, *e.g.*, *Concrete Pipe & Prods. of Cal., Inc.* v. *Construction Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 646 (1993); *Connolly* v. *Pension Benefit Guar. Corp.*, 475 U.S. 211, 227 (1986). Indeed, the court of appeals suggested that petitioner's "structural evolution and network of changing affiliates and names" may "reflect[] precisely the kind of 'corporate shell game' that Congress was concerned about when it enacted the Coal Act." Pet. App. 37a n.25.[5]

2. The Third Circuit's decision in this case does not conflict with the decision of any other circuit. To the contrary, the Fourth Circuit has held, consistently with the Third Circuit here, that *Eastern Enterprises* does

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[5] Petitioner now "disputes" (Pet. 11) whether the Coal Act's "related person" provisions permitted the Commissioner to sustain petitioner's assignments based, in part, on its relationship to a signatory of the 1974 NBCWA and subsequent NBCWAs. Petitioner did not raise any such argument below. See, *e.g.*, Pet. App. 32a-33a (noting that petitioner "does not claim that retired miners (or their dependents) were mistakenly assigned to it," but rather "claims that the assignments, though factually correct, render the [Coal] Act unconstitutional as applied," which "is not an issue of statutory construction"); *ibid.* (petitioner "has not challenged the 'related person' provision of the [Coal] Act"). Any question of "statutory interpretation" (Pet. 11) is thus not properly before the Court. See, *e.g.*, *Sprietsma* v. *Mercury Marine*, 123 S. Ct. 518, 522 n.4 (2002); *Bath Iron Works Corp.* v. *Director, Office of Workers' Comp. Programs*, 506 U.S. 153, 162 n.12 (1993).

not require the invalidation of assignments to companies that are not themselves signatories of the 1974 NBCWA or a subsequent NBCWA, but that are statutory "related persons" of such signatories. See *A.T. Massey Coal Co.* v. *Massanari*, 305 F.3d 226 (2002), petition for cert. pending, No. 02-956 (filed Dec. 17, 2002). More generally, the D.C. Circuit has held that assignments based on participation in the 1974 NBCWA or a subsequent NBCWA distinguish a case from *Eastern Enterprises*, without attributing any significance to whether the NBCWA was signed by the party to which the assignment was made or by a related person. See *Association of Bituminous Contractors, Inc.* v. *Apfel*, 156 F.3d 1246, 1257 (1998). The uniformity of judicial holdings on the scope and application of *Eastern Enterprises* refutes petitioner's assertion that further guidance from this Court is needed.

3. This Court issued its decision in *Eastern Enterprises* nearly five years ago. The Commissioner has long since decided which assignments should and should not be vacated based on the holding in that case. It is thus unlikely that cases such as this one challenging the Commissioner's determinations as to which Coal Act assignments fall within the ambit of *Eastern Enterprises* will continue to arise in the future. Moreover, as the elderly beneficiary population continues to decline as a result of mortality, petitioner and other assigned companies will have to pay premiums for fewer beneficiaries with each passing year. See Pet. App. 13a (noting decline in number of beneficiaries for whom petitioner is responsible).[6] For these reasons as well,

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[6] Even if petitioner could establish that the Commissioner should have voided its assignments after this Court's decision in *Eastern Enterprises*, that would not mean that petitioner would be

this case presents no question of continuing importance that warrants the Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2003

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entitled to a refund of Coal Act premiums paid before that decision. As noted above (at 7), when petitioner initially challenged its assignments under the Just Compensation Clause and the Due Process Clause, the district court and the court of appeals denied relief, and this Court denied certiorari nearly two years before *Eastern Enterprises*. It is thus doubtful that the amount of money at issue in this case is as great as petitioner suggests (see Pet. 5, 9). See *Blue Diamond Coal Co.* v. *Trustees of UMWA Combined Benefit Fund*, 249 F.3d 519, 528-529 (6th Cir.) (when coal operator unsuccessfully litigated constitutionality of its assignments to final judgment before *Eastern Enterprises*, coal operator was not entitled to relief from judgment to seek refund of premiums paid before *Eastern Enterprises*), cert. denied, 534 U.S. 1054 (2001).